

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

CEDARS-SINAI MEDICAL CENTER

and

Case 31-CA-143038

CHANDRA LIPS

ORDER¹

The Respondent's request for special permission to appeal the August 31, 2015 ruling of Administrative Law Judge Ariel L. Sotolongo is denied. The Respondent has failed to establish that the judge abused his discretion by precluding as irrelevant the Respondent's proposed testimony by recruitment manager Ishioka and linguistics expert Finegan.

Dated, Washington, D.C., December 1, 2015.

KENT Y. HIROZAWA,

MEMBER

LAUREN McFERRAN,

MEMBER

Member Miscimarra, dissenting.

I would grant the request for special permission to appeal on the basis that the Board should evaluate the potential relevance of the excluded testimony by recruitment manager Ishioka (regarding basic characteristics of the workforce, including literacy and educational requirements) and linguistics expert Finegan (regarding the readability of the agreement at issue in the instant case and whether it would be reasonably interpreted by employees to preclude the filing of Board charges). Although the current

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Board standard purports to involve an objective inquiry, which turns on how employees would “reasonably construe” a particular agreement or its provisions, *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 647 (2004) (*Lutheran Heritage*), the *Lutheran Heritage* standard has produced results that are difficult to reconcile and many disagreements between judges and the Board, between and among Board members, and between the Board and the courts regarding how employees would “reasonably” interpret disputed provisions. Moreover, I have expressed disagreement with the *Lutheran Heritage* “reasonably construe” standard and advocated that the Board formulate a different standard in an appropriate future case. See, e.g., *Lily Transportation Corp.*, 362 NLRB No. 54, slip op. at 1 fn. 3 (2015); *Conagra Foods, Inc.*, 361 NLRB No. 113, slip op. at 8 fn. 2 (2014); *Triple Play Sports Bar & Grille*, 361 NLRB No. 31, slip op. at 10 fn. 3 (2014), *affd. sub nom. Three D, LLC v. NLRB*, Nos. 14-3284, -3814, 2015 WL 6161477 (2d Cir. Oct. 21, 2015). I believe the expert testimony at issue here could potentially assist the Board when evaluating these issues.

PHILIP A. MISCIMARRA, MEMBER